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'Leaks in the night' price of sane security

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Our secret agents in an allied government report that a top official of that regime has shipped 200 kilograms of heroin into the United States, and name the Americans involved. The director of the CIA rather than compromise his spy network, withholds the information from law enforcement authorities, and the smugglers go free.

A high-ranking U.S. military officer at a foreign base, engaged in an extramarital affair with a spy, is blackmailed into turning over military secrets. A double agent working for the CIA learns about it. The Pentagon wants to prosecute the officer, but the attorney general says the CIA will have to surface its double agent. The case is dropped and the blackmailed officer retires on full pension.

A high CIA official helps a close friend, the president of a small sugar-growing country, to pass bribes to members of Congress to get an increase in the sugar import quota. Superiors in the agency learn of it. The CIA officer, facing indictment, along with a lobbyist and several congressmen, threatens to expose classified material, including a secret message he delivered from the President of the United States. The prosecution is dropped.

These are "hypothetical" but "realistic" cases developed, for illustrative purposes, by the staff of a Senate intelligence subcommittee after a review of 40 actual cases in recent years, trying to learn why no intelligence leak has been successfully prosecuted. The startling conclusion was that no present or proposed law against intelligence leaks can effectively be enforced, given the strange things that go on in the government.

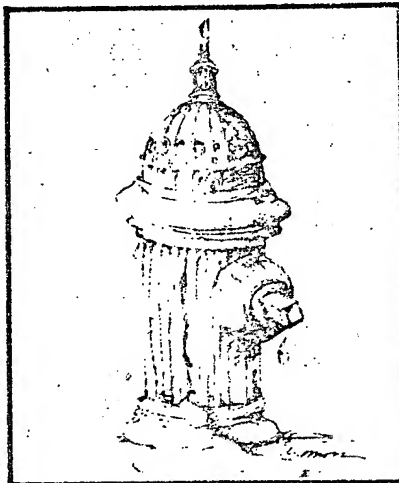
It may come as a surprise to many that the main reason for the "complete breakdown" in enforcement of laws to guard national security is not what happens in the press, but what happens — and does not happen — in the government. The staff study found that some of the reasons for failure to punish harmful leaks were the following:

- Confirmation of the leak would "damage the agency's reputation for keeping secrets."

- The leak came from a high agency official, acting without authority, but who would be embarrassed by the investigation.

- The leak is "actually an authorized disclosure and pursuit of the investigation would be unjust."

After interviewing more than 30 officials of the Justice and State departments and intelligence agencies, the Senate investigators found that intelligence information is routinely leaked by officials "in an attempt to influence public debate." Not only does this practice give the public an unbalanced selection of intelligence information, but sometimes — as with a self-serving Pentagon leak



about a new Soviet intercontinental missile — may compromise the source of the information, the study found.

The congressional focus on the real problems of maintaining national security represents a sign of returning sanity after an era in which the unraveling of Watergate and the misdemeanors of the intelligence community created the impression that the omnipotent American news media could unlock the government's vaults at will and strip them of all our vital secrets.

Adm. Stansfield Turner, current director of the CIA, has said, "If the society cannot trust the judgment of its public servants regarding what should and should not be withheld from the public, then the society can, in fact, have no secrets at all."

The recent past — with the Nixon debasement of national security into an instrument of cover-up, and the efforts of the CIA and FBI to hide their malfeasances — does not, however, encourage reliance on the sole discretion of government to wield the "secret" stamp. Nor does the experience of former CIA Director William Colby, who discloses in his forthcoming CIA-cleared memoir that Vice President Nelson Rockefeller actually asked him to be less forthcoming before the investigating commission Rockefeller headed.

Yet there is a real problem of national security to be wrestled with. Another sign of returning sanity is the effort to find ways of protecting secrets without invading constitutional freedoms.

For two years now, Colby and I have had a running dialogue, in forums like Princeton, the University of Virginia and the New School for Social Research, on the issue of secrecy vs. disclosures.

He would propose a law making it a crime for a government official to disclose information that would betray intelligence sources and methods, with federal judges as the final arbiters of what properly should be kept secret. Each time he would emphasize the law would apply to government officials, not the press.

Each time I would counter that if leaking were declared a crime, the recipient of the leak automatically would be the witness to a crime and could be asked by a grand jury, on pain of contempt, to name the source. Colby agreed this might be a problem.

Recently, Colby appeared before a Senate intelligence subcommittee, headed by Sen. Joseph Biden, (Dem., Del.), formally outlining his proposed statute to protect intelligence sources. One paragraph provided for a "shield law" that would protect journalists from having to testify about where they got the information.

As he left the witness stand, the CIA chief who was fired by President Ford for being too candid stopped at the press table.

"How do you like it with the Schorr amendment?" he asked me smilingly.

That seemed a sign of returning sanity.